

February 15, 2019

VIA E-MAIL AND U.S. MAIL

Michael Brodkorb



Re: *Response to Request for Public Data*

Dear Mr. Brodkorb:

This letter, on behalf of the One Minnesota Transition Committee,¹ responds to your “Request for Public Data.”² The Transition Committee received a “request for access to government data under the Minnesota Government Data Practices Act” from you in an email dated Friday, December 21, 2018, at 2:44 PM.³ Your request for access to government data requested “communications” between “Governor-Elect Tim Walz and/or Lt. Governor-Elect Peggy Flanagan” and certain individuals.⁴

The Transition Committee will not provide “communications” or any other data to you because the Transition Committee is not a government entity subject to the Minnesota Government Data Practices Act (the “Act”). The Transition Committee is a nonprofit corporation organized under the Minnesota Nonprofit Corporation Act and registered with the Internal Revenue Service (IRS) under Section 527 of the Internal Revenue Code. The Transition Committee was established to assist Governor-Elect Tim Walz with preparing for the assumption of official duties as governor. The Transition Committee itself is not a government entity.

The Act regulates “government data collected, created, received, maintained or disseminated by a *government entity*” Minn. Stat. § 13.03, subd. 1 (emphasis added). The Act defines “Government entity” as “a state agency, statewide system, or political subdivision.” Minn. Stat. § 13.02, subd. 7a. “State agency” is defined as “the state, the University of Minnesota, and any office, officer, department, division, bureau, board, commission, authority, district or agency of the state.” Minn. Stat. § 13.02, subd. 17. “Statewide system” is defined as “any record-keeping system in which government data is collected, stored, disseminated and used by means of a system common to one or more state agencies or more than one of its political subdivisions or any combination of state agencies and political subdivisions.” Minn. Stat. § 13.02, subd. 18. The Act defines “Political subdivision” as “any county, statutory or home rule charter city, school district, special district, any town . . . and any board,

¹ This letter often will refer to the One Minnesota Transition Committee as the “Transition Committee.”

² Enclosed with this letter is a copy of your “Request for Public Data.”

³ Request for Public Data.

⁴ Request for Public Data.

commission, district or authority created pursuant to law, local ordinance or charter provision.” Minn. Stat. § 13.02, subd. 11.

The Transition Committee does not constitute a “government entity” under the definitions of the term in the Act. The Transition Committee is not a “political subdivision” because it does not constitute a county, city, school district, special district, or town, and it was not created under any local ordinance or charter provision. *See* Minn. Stat. § 13.02, subd. 11 (defining “political subdivision”). The Transition Committee is not a “statewide system” because it does not constitute a “record-keeping system” under that definition in the statute. *See* Minn. Stat. § 13.02, subd. 18 (defining “statewide system”). The Transition Committee is not a “state agency” under the meaning of that term in the statute. *See* Minn. Stat. § 13.02, subd. 17 (defining “state agency”). The Transition Committee is not itself the State of Minnesota. *Id.* Nor is it the University of Minnesota. *Id.* The Transition Committee is not a state office, officer, department, division, bureau, board, commission, authority, district, or agency. *Id.* The Transition Committee is legally organized as a Minnesota nonprofit corporation and registered with the IRS under Section 527 of the Internal Revenue Code. The Transition Committee’s purpose was to assist Governor-Elect Tim Walz and Lt. Governor-Elect Peggy Flanagan with preparing to assume their official duties as governor and lieutenant governor. The Transition Committee did not constitute any part of the actual government of the State. The Transition Committee is not a state agency. *See Minnesota Joint Underwriting Ass’n v. Star Tribune Media Co., LLC*, 862 N.W.2d 62, 66 (Minn. 2015) (holding that Minnesota Joint Underwriting Association is not a “government entity” or “state agency” under the Act). Applying the plain meaning of the definition in the statute, the Transition Committee is not a “government entity.”

Because the Transition Committee is not a government entity, it does not have any “government data.” Minn. Stat. § 13.02, subd. 7. Your request for “government data” from the Transition Committee is thus defective under the plain meaning of the Act.

Although a statute authorizes the Commissioner of the Department of Management and Budget to pay up to \$162,000 in “expenses of the governor-elect associated with preparing for the assumption of official duties as governor,” Minn. Stat. § 4.51, subd. 2, this funding for the governor-elect does not somehow convert the Transition Committee into a government entity. Section 4.51 defines the “governor-elect” as “the person who is not currently governor and is the apparent successful candidate for the office of governor following a general election.” Minn. Stat. § 4.51, subd. 1. Other statutes mention the governor-elect. For example, section 299D.03 authorizes the Minnesota State Patrol to provide security and protection to the governor-elect. Minn. Stat. § 299D.03, subd. 1(b)(10). None of those other statutes, however, define the governor-elect or a transition office as a government entity. *See* Minn. Stat. § 16A.10, subd. 3 (stating that “commissioner shall report the budget estimates and make available to the governor-elect all department information, staff, and facilities relating to the budget”); Minn. Stat. § 16A.04, subd. 1 (stating that commissioner shall prepare the biennial budget under supervision of the governor, “unless there is a governor-elect, who then shall provide the supervision”); Minn. Stat. § 4.06(b) (addressing succession upon “death or other failure to take office of the governor-elect”).

The Act does not define a transition office or the governor-elect as a government entity. The legislature could have written such language into the Act, but it did not. When interpreting the Act, the Minnesota Supreme Court stated that it must “apply the statute as written,” and must not add words or meanings that do not exist. *Helmberger v. Johnson Controls, Inc.*, 839 N.W.2d 527, 532 (Minn. 2013) (citing *Premier Bank v. Becker Dev., LLC*, 785 N.W.2d 753, 760 (Minn. 2010) (“If the legislature fails to address a particular topic, our rules of construction ‘forbid adding words or meaning to a statute’ that are purposely omitted or inadvertently overlooked.” (quoting *Genin v. 1996 Mercury Marquis*, 622 N.W.2d 114, 117 (Minn. 2001)))). The plain language of the Act shows that the Transition Committee is not a “government entity.”

Furthermore, the Transition Committee is not a responsible authority under the Act. Nor is the governor-elect. The Minnesota Court of Appeals explained that Minnesota Statutes sections 13.03 and 13.04 “expressly require persons to make their data-practices requests to a responsible authority or designee.” *Scheffler v. City of Anoka*, 890 N.W.2d 437, 446 (Minn. Ct. App. 2017), *review denied* (Apr. 26, 2017). The Act defines the “responsible authority” in a state agency or statewide system as “the state official designated by law or by the commissioner as the individual responsible for the collection, use and dissemination of any set of data on individuals, government data, or summary data.” Minn. Stat. § 13.02, subd. 16. The Transition Committee is not a “state official” under this definition. Nor is the governor-elect. A prerequisite under the Act to both the duty to provide data and the right to receive it is a data-practices request to a responsible authority or designee. *Scheffler*, 890 N.W.2d at 447. The Act “does not recognize responsible authorities or designees by operation of common-law apparent-authority principles.” *Id.* Because neither the Transition Committee nor the governor-elect are a responsible authority under the Act, no duty to provide data exists. *Id.*

To summarize, the Transition Committee will not provide “communications” or any other data to you because the Transition Committee is not a government entity subject to the Act, the Transition Committee does not have any government data under the Act, and the Transition Committee is not a responsible authority under the Act.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kristen McMullen', with a stylized, cursive script.

Kristen McMullen
One Minnesota Transition Committee

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Enclosure (“Request for Public Data”)